



## **FEDERAL TRADE COMMISSION**

### **Privacy Act of 1974; System of Records**

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice of routine use.

**SUMMARY:** The FTC is adopting in final form a new routine use that permits disclosure of the agency's Freedom of Information Act ("FOIA") request and appeal records to the Office of Government Information Services ("OGIS"), in order for OGIS to assist FOIA requesters in the processing and resolution of their requests and appeals. In addition to revising the applicable Privacy Act system of records notice to include this new routine use, the FTC is also separately making a technical revision to update the records disposition section of the notice.

**DATES:** These amendments are effective [insert date of publication in the **FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** G. Richard Gold and Alex Tang, Attorneys, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2424.

#### **SUPPLEMENTARY INFORMATION:**

In a document previously published in the **FEDERAL REGISTER**, 82 FR 10012 (Feb. 9, 2017), the Federal Trade Commission, as required by the Privacy Act, sought comments on a proposal to adopt a new routine use. *See* 5 U.S.C. 552a(e)(4) and (11). As the FTC explained, the new routine use, the text of which is set forth at the end of this document, authorizes the FTC to disclose FOIA request and appeal records covered by

FTC-V-1 to the Office of Government Information Services (“OGIS”), in order for OGIS to assist requesters in the processing and resolution of their requests and appeals.

The OPEN Government Act of 2007 amended the Freedom of Information Act and created OGIS within the National Archives and Records Administration (“NARA”). The 2007 FOIA amendments require OGIS to review agency FOIA policies, procedures, and compliance, and to offer mediation services to resolve disputes between FOIA requesters and agencies. *See* 5 U.S.C. 552(h).

In order for OGIS to fulfill its statutory responsibilities, it requires access to FOIA request files originated and maintained by federal agencies including the FTC. However, because the FOIA request and appeal records covered by FTC-V-1 are governed by the Privacy Act of 1974, their disclosure normally requires the prior written consent of the individual to whom the records pertain (including, for example, an individual filing a FOIA request), unless the agency has published a routine use authorizing disclosure.

The Privacy Act authorizes the agency to adopt routine uses that are consistent with the purpose for which information is collected. 5 U.S.C. 552a(b)(3); *see also* 5 U.S.C. 552a(a)(7). The FTC believes that it is consistent with the purposes for which the FOIA request and appeal records covered by FTC-V-1 are collected to disclose such records routinely to OGIS to help OGIS mediate between individual FOIA requesters and agencies and ensure compliance with the FOIA statute. If agencies do not establish a “routine use” to provide for this proposed disclosure, OGIS would have to obtain the written consent of the individual FOIA requesters in order to obtain the access it requires to assist that requester. Simplifying the procedure for exchanging information would increase the efficiency of the FOIA administrative process. FTC staff understands that

obtaining such consent has proven more complicated in some circumstances, *e.g.*, when an agency, rather than the individual FOIA requester, seeks OGIS's assistance to mediate between the agency and the individual FOIA requester. Accordingly, the Commission concludes that it is authorized under the Privacy Act to adopt a routine use permitting disclosure of Privacy Act records for such purposes.

In seeking public comments on the proposed routine use, the FTC explained that it would take into account any such comments and make appropriate or necessary revisions, if any, before publishing the proposed routine use as final. In response to the one comment received from the Office of Management and Budget (OMB), the FTC is republishing an updated notice to clarify that the text of Appendices I-III, cited in this system of records notice (SORN), is publicly available on the privacy program page of the FTC's Web site and previously published in the FEDERAL REGISTER.

The FTC is also separately making a technical revision that updates the records disposition section of FTC-V-1. During January 2017, NARA issued General Records Schedule 4.2, Records of Information Access and Protection, which in part superseded and rescinded General Records Schedule 14, which previously covered FOIA-related records across the federal government. FTC-V-1's records disposition section has been updated accordingly. This change does not require prior public comment or notice to the Office of Management & Budget (OMB) and Congress. *See* U.S.C. 552a(e)(11) and 552a(r); OMB Circular A-108 (2016).

In light of the updated SORN template set forth in the newly revised OMB Circular A-108, the FTC is reprinting the text of the entire SORN, including the new routine use, for the public's benefit, to read as follows:

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**V. FTC Access Requests**

**SYSTEM NAME AND NUMBER:**

Freedom of Information Act Requests and Appeals–FTC (FTC-V-1).

**SECURITY CLASSIFICATION:**

Not applicable.

**SYSTEM LOCATION:**

Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's privacy program page at [www.ftc.gov/privacy](http://www.ftc.gov/privacy) and at 80 FR 9460, 9465 (Feb. 23, 2015).

**SYSTEM MANAGER(S):**

FOIA/PA Supervisor, Office of General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Federal Trade Commission Act, 15 U.S.C. 41 et seq.; Freedom of Information Act, 5 U.S.C. 552.

**PURPOSE(S) OF THE SYSTEM:**

To consider requests and appeals for access to records under the Freedom of Information Act; to determine the status of requested records; to respond to the requests and appeals; to make copies of FOIA requests and frequently requested records available publicly, under the FTC's Rules of Practice and FOIA; to maintain records, documenting

the consideration and disposition of the requests for reporting, analysis, and recordkeeping purposes.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals filing requests for access to information under the Freedom of Information Act (FOIA); individuals named in the FOIA request; FTC staff assigned to help process, consider, and respond to such requests, including any appeals.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Communications (e.g., letters, e-mails) to and from the requesting party; agency documents generated or collected during processing and consideration of the request, including scanned copies of materials responsive to the FOIA request.

**RECORD SOURCE CATEGORIES:**

Individual about whom the record is maintained and agency staff assigned to help process, review, or respond to the access request, including any appeal.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

(1) Request and appeal letters, and agency letters responding thereto, are placed on the FTC's public record and available to the public for routine inspection and copying. See FTC-I-6 (Public Records–FTC).

(2) As required by the FOIA, records that have been “frequently requested” and disclosed under the FOIA within the meaning of that Act, as determined by the FTC, are made available to the public for routine inspection and copying. See FTC-I-6 (Public Records–FTC).

(3) Disclosure to the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS's offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's privacy program page at [www.ftc.gov/privacy](http://www.ftc.gov/privacy) and at 73 FR 33592, 36333-36334 (June 12, 2008).

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are maintained electronically using a commercial software application run on the agency's internal servers. Temporary paper files are destroyed once the request is complete.

#### **POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Indexed by name of requesting party and subject matter of request. Records can also be searched by name, address, phone number, fax number, and e-mail of the requesting party, subject matter of the request, requestor organization, FOIA number, and staff member assigned to the request.

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records are retained and disposed of in accordance with General Records Schedule 4.2, issued by the National Archives and Records Administration.

## **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Requests, appeals, and responses available to the public, as described above.

Access to nonpublic system records is restricted to FTC personnel or contractors whose responsibilities require access. Nonpublic paper records are temporary, maintained in lockable file cabinets or offices, and destroyed once the request is complete. Access to electronic records is controlled by “user ID” and password combination and other electronic access or network controls (e.g., firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

## **RECORD ACCESS PROCEDURES:**

See § 4.13 of the FTC’s Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC’s privacy program page at [www.ftc.gov/privacy](http://www.ftc.gov/privacy) and at 73 FR 33592, 33634 (June 12, 2008).

## **CONTESTING RECORD PROCEDURES:**

See § 4.13 of the FTC’s Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC’s privacy program page at [www.ftc.gov/privacy](http://www.ftc.gov/privacy) and at 73 FR 33592, 33634 (June 12, 2008).

## **NOTIFICATION PROCEDURES:**

See § 4.13 of the FTC’s Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC’s

privacy program page at [www.ftc.gov/privacy](http://www.ftc.gov/privacy) and at 73 FR 33592, 33634 (June 12, 2008).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

Records contained in this system that have been placed on the FTC public record are available upon request, as discussed above. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

**HISTORY:**

73 FR 33592-33634 (June 12, 2008).

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David C. Shonka,  
Acting General Counsel.  
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